

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

CASE NO. 21-cv-169

Plaintiff,

ORDER REQUESTING ADDITIONAL
BRIEFING AND RENOTING MOTION
FOR ENTRY OF CONSENT DECREE

v.

WASHINGTON DEPARTMENT OF FISH &
WILDLIFE; KELLY SUSEWIND, in his
official capacity as the Director of the
Washington Department of Fish & Wildlife;
BARBARA BAKER, in her official capacity as
Chair of the Washington Fish & Wildlife
Commission; MOLLY LINVILLE, in her
official capacity as Vice Chair of the
Washington Fish & Wildlife Commission;
JAMES ANDERSON, in his official capacity as
a member of the Washington Fish & Wildlife
Commission; LORNA SMITH, in her official
capacity as a member of the Washington Fish &
Wildlife Commission; JOHN LEHMKUHL, in
his official capacity as a member of the
Washington Fish & Wildlife Commission; TIM
RAGEN, in his official capacity as a member of
the Washington Fish & Wildlife Commission;
MELANIE ROWLAND, in her official capacity
as a member of the Washington Fish & Wildlife
Commission; and KIM THORNBURN, in her
official capacity as a member of the Washington
Fish & Wildlife Commission,

Defendants.

1 This matter comes before the Court on the parties' Motion For Joint Entry of Consent
2 Decree. Dkt. No. 73. In its Second Amended and Supplemental Complaint, Plaintiff alleges
3 Defendants violated the Endangered Species Act (ESA) by "implement[ing] and funding" various
4 hatchery programs throughout the Puget Sound and Columbia River basin. Dkt. No. 49 at 17-18,
5 24. Plaintiff seeks declaratory and injunctive relief for Defendants' alleged violations of the ESA.
6 Dkt. No. 49 at 24-25.

7 Before the parties filed their proposed Consent Decree, the Nooksack Indian and Tulalip
8 Tribes, Squaxin Island Tribe, Lummi Indians of the Lummi Reservation of Washington, and the
9 Puyallup Tribe of Indians (collectively, "Prospective Intervenors") filed motions to intervene for
10 a limited purpose. Dkt. Nos. 50, 56, 57, 64. Prospective Intervenors request intervention under
11 Fed. R. Civ. 24(a) for the limited purpose of filing motions to dismiss under Fed. R. Civ. P.
12 12(b)(7) and Fed. R. Civ. P. 19. *See id.* Generally, Prospective Intervenors assert the relief sought
13 by Plaintiff could affect fish resources to which they have treaty rights. *See id.* Prospective
14 Intervenors argue that they should be permitted to intervene because Defendants would not defend
15 their respective rights to the hatcheries at issue. *See id.* Plaintiff did not object to intervention by
16 Intervenors. *See* Dkt. Nos. 54, 70, 71, 72.

17 The proposed Consent Decree's terms impose obligations on the parties that do not appear
18 to implicate any of the Prospective Intervenors directly but pertain to fish and numerous hatcheries.
19 *See* Dkt. No. 73 at 6-9; Ex. A. The parties' proposed Consent Decree states that it "is a full and
20 complete settlement and release of all ESA violations alleged by the Conservancy in the Second
21 Amended and Supplemental Complaint, the First Notice Letter, and the Second Notice Letter that
22 occurred prior to and through the date of entry of this Consent Decree." Dkt. No. 73 at 10-11.

23 In their motion, the parties state they "are noting this motion as a third Friday motion to
24 provide an opportunity for interested parties to respond as appropriate." Dkt. No. 73 at 2. Friday,

1 June 16, 2023, was the noting date for the parties' motion. Dkt. No. 73. But to date, Prospective
2 Intervenorors have not filed any response. *See* Dkt.

3 The Court ORDERS Prospective Intervenorors to provide briefing on the following two
4 issues:

5 (1) Whether Prospective Intervenorors' motions to intervene for the limited purpose of filing
6 motions to dismiss this lawsuit are moot in light of the parties' Motion For Joint Entry
7 of Consent Decree (Dkt. No. 73);

8 (2) If Prospective Intervenorors contend their motions to intervene are not moot, please
9 provide legal authority and argument in response to the parties' Motion For Joint Entry
10 of Consent Decree.

11 Prospective Intervenorors are ORDERED to file their responses to the Court's questions
12 within 14 days of entry of this order; Plaintiff and Defendants may file responses within 21 days
13 of entry of this order. If Prospective Intervenorors take no position concerning the proposed Consent
14 Decree, they should say so. Submissions must not exceed 4,200 words. The Motion For Joint Entry
15 of Consent Decree is re-noted for July 14, 2023.

16 It is so ORDERED.

17 Dated this 23rd day of June, 2023.

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20 Jamal N. Whitehead
21 United States District Judge
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